

AMENDED IN ASSEMBLY APRIL 7, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1077

Introduced by Assembly Member Holden

February 27, 2015

An act to amend Section 14305 of the Corporations Code, relating to mutual water companies.

LEGISLATIVE COUNSEL’S DIGEST

AB 1077, as amended, Holden. Mutual water companies: open meetings.

Under existing law, a mutual water company is defined as a corporation organized for or engaged in the business of selling, distributing, supplying, or delivering water for irrigation or domestic purposes that provides in its articles or bylaws that the water shall be sold, distributed, supplied, or delivered only to owners of its shares, as specified.

A mutual water company may be organized under the General Corporation Law or the Nonprofit Mutual Benefit Corporation Law. The Mutual Water Company Open Meeting Act authorizes an eligible person, upon 24 hours advance written notice, to attend meetings of the board of directors of a mutual water company that operates a public water system, except when the board adjourns to, or meets solely in, executive session.

This bill would prohibit a mutual water company from meeting solely in an executive session without holding a meeting. *The bill would require notice of a meeting to be given to an eligible person at least 5 business days prior to the meetings.* The bill would require a board of directors of a mutual water company to allow an eligible person to

personally attend a meeting of the board, if the eligible person gave the board at least 24 hours advance written notice of his or her intent to personally attend the meeting. The bill would require the board to allow an eligible person who was denied attendance at a meeting for failure to provide this notice, *or because the number of eligible persons having already provided notice of attendance exceeds the room capacity of the place of the meeting*, to be able to attend the meeting by technology that allows the eligible person to hear the meeting and verbally interact with the board, and would further require the board to provide to an eligible person attending a meeting by technology a copy of the documents to be discussed at the meeting, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 14305 of the Corporations Code is
2 amended to read:
3 14305. (a) (1) This section shall be known and may be cited
4 as the Mutual Water Company Open Meeting Act.
5 (2) This section shall only apply to a mutual water company
6 that operates a public water system.
7 (b) (1) A board of directors of a mutual water company shall
8 allow an eligible person to personally attend a meeting of the board,
9 if the eligible person gave the board at least 24 hours advance
10 written notice of his or her intent to personally attend the meeting.
11 An eligible person denied attendance at a meeting of the board for
12 failure to provide this notice, *or because the number of eligible*
13 *persons having already provided notice of attendance exceeds the*
14 *room capacity of the place of the meeting described in the notice*
15 *issued pursuant to subdivision (f)*, shall be able to attend the
16 meeting by technology that allows the eligible person to hear the
17 meeting and verbally interact with the board, including, but not
18 limited to, a telephone or computer. The board shall provide to an
19 eligible person attending a meeting by technology, before the
20 meeting begins, a copy of all documents to be discussed at the
21 meeting. A board of directors of a mutual water company shall
22 not prohibit an eligible person from attending a meeting of the
23 board either in person or by technology in compliance with this
24 paragraph.

1 (2) A board of directors of a mutual water company shall only
2 meet in executive session during a meeting. A board may prohibit
3 an eligible person from attending an executive session to consider
4 litigation, matters relating to the formation of contracts with third
5 parties, member or shareholder discipline, personnel matters, or
6 to meet with a member or shareholder, upon the member or
7 shareholder's request, regarding the member or shareholder's
8 payment of assessments, as specified in Section 14303.

9 (3) The board of directors of a mutual water company shall meet
10 in executive session, if requested by a member or shareholder who
11 may be subject to a fine, penalty, or other form of discipline, and
12 the member shall be entitled to attend the executive session.

13 (4) An eligible person shall be allowed to attend a teleconference
14 meeting, as specified in paragraph (3) of subdivision (o), or the
15 portion of the teleconference meeting that is open to eligible
16 persons, without fulfilling the notice requirement in paragraph (1).
17 The teleconference meeting or portion of the meeting that is open
18 to eligible persons shall be audible to the eligible person in a
19 location specified in the notice of the meeting.

20 (c) Any matter discussed in executive session shall be generally
21 noted in the minutes of the immediately following meeting.

22 (d) The minutes, minutes proposed for adoption that are marked
23 to indicate draft status, or a summary of the minutes, of any
24 meeting of the board of directors of a mutual water company,
25 conducted on or after January 1, 2014, other than an executive
26 session, shall be available to eligible persons within 30 days of the
27 meeting. The minutes, proposed minutes, or summary minutes
28 shall be provided to any eligible person upon request and upon
29 reimbursement of the mutual water company's costs for providing
30 the minutes.

31 (e) The pro forma budget required in Section 14306 shall be
32 available to eligible persons within 30 days of the meeting at which
33 the budget was adopted. The budget shall be provided to any
34 eligible person upon request and upon reimbursement of the mutual
35 water company's costs.

36 (f) Unless the bylaws provide for a longer period of notice,
37 eligible persons shall be given notice of the time and place of a
38 meeting as defined in subdivision (o), except for an emergency
39 meeting,, at least ~~four~~ *five business* days prior to the meeting.
40 Notice shall be given by posting the notice in a prominent, publicly

1 accessible place or places within the territory served by the mutual
2 water company and by mail to any eligible person who had
3 requested notification of board meetings by mail, at the address
4 requested by the eligible person. Eligible persons requesting notice
5 by mail shall pay the costs of reproduction and mailing of the
6 notice in advance. Notice may also be given by mail, by delivery
7 of the notice to each unit served by the mutual water company or,
8 with the consent of the eligible person, by electronic means. The
9 notice shall contain the agenda for the meeting.

10 (g) An emergency meeting of the board may be called by the
11 chief executive officer of the mutual water company, or by any
12 two members of the board of directors other than the chief
13 executive officer, if there are circumstances that could not have
14 been reasonably foreseen which require immediate attention and
15 possible action by the board, and which of necessity make it
16 impracticable to provide notice as required by this section.

17 (h) The board of directors of a mutual water company shall
18 permit any eligible person to speak at any meeting of the mutual
19 water company or the board of directors, except for an executive
20 session outside the presence of eligible persons. A reasonable time
21 limit for all eligible persons to speak to the board of directors or
22 before a meeting of the mutual water company shall be established
23 by the board of directors.

24 (i) (1) Except as described in paragraphs (2) to (4), inclusive,
25 the board of directors of the mutual water company shall not
26 discuss or take action on any item at a nonemergency meeting
27 unless the item was placed on the agenda included in the notice
28 that was posted and distributed pursuant to subdivision (f). This
29 subdivision does not prohibit an eligible person who is not a
30 member of the board from speaking on issues not on the agenda.

31 (2) Notwithstanding paragraph (1), a member of the board of
32 directors, mutual water company officers, or a member of the staff
33 of the mutual water company, may do any of the following:

34 (A) Briefly respond to statements made or questions posed by
35 a person speaking at a meeting as described in subdivision (h).

36 (B) Ask a question for clarification, make a brief announcement,
37 or make a brief report on his or her own activities, whether in
38 response to questions posed by an eligible person or based upon
39 his or her own initiative.

1 (3) Notwithstanding paragraph (1), the board of directors or a
2 member of the board of directors, subject to rules or procedures
3 of the board of directors, may do any of the following:

4 (A) Provide a reference to, or provide other resources for factual
5 information to, the mutual water company's officers or staff.

6 (B) Request the mutual water company's officers or staff to
7 report back to the board of directors at a subsequent meeting
8 concerning any matter, or take action to direct the mutual water
9 company's officers or staff to place a matter of business on a future
10 agenda.

11 (C) Direct the mutual water company's officers or staff to
12 perform administrative tasks that are necessary to carry out this
13 subdivision.

14 (4) (A) Notwithstanding paragraph (1), the board of directors
15 may take action on any item of business not appearing on the
16 agenda posted and distributed pursuant to subdivision (f) under
17 any of the following conditions:

18 (i) Upon a determination made by a majority of the board of
19 directors present at the meeting that an emergency situation exists.
20 An emergency situation exists if there are circumstances that could
21 not have been reasonably foreseen by the board, that require
22 immediate attention and possible action by the board, and that, of
23 necessity, make it impracticable to provide notice.

24 (ii) Upon a determination made by the board by a vote of
25 two-thirds of the members present at the meeting, or, if less than
26 two-thirds of total membership of the board is present at the
27 meeting, by a unanimous vote of the members present, that there
28 is a need to take immediate action and that the need for action
29 came to the attention of the board after the agenda was posted and
30 distributed pursuant to subdivision (f).

31 (iii) The item appeared on an agenda that was posted and
32 distributed pursuant to subdivision (f) for a prior meeting of the
33 board of directors that occurred not more than 30 calendar days
34 before the date that action is taken on the item and, at the prior
35 meeting, action on the item was continued to the meeting at which
36 the action is taken.

37 (B) Before discussing any item pursuant to this paragraph, the
38 board of directors shall openly identify the item to the members
39 in attendance at the meeting.

1 (j) (1) Notwithstanding any other law, the board of directors
2 shall not take action on any item of business outside of a meeting.

3 (2) (A) Notwithstanding any other provision of law, the board
4 of directors shall not conduct a meeting via a series of electronic
5 transmissions, including, but not limited to, electronic mail, except
6 as specified in subparagraph (B).

7 (B) Electronic transmissions may be used as a method of
8 conducting an emergency meeting if all members of the board,
9 individually or collectively, consent in writing to that action, and
10 if the written consent or consents are filed with the minutes of the
11 meeting of the board. These written consents may be transmitted
12 electronically.

13 (k) (1) An eligible person may bring a civil action for
14 declaratory or equitable relief for a violation of this section by a
15 mutual water company for which he or she is defined as an eligible
16 person for a judicial determination that an action taken by the board
17 is null and void under this section.

18 (2) Prior to the commencement of an action pursuant to
19 paragraph (1), the eligible person shall make a demand on the
20 board to cure or correct the action alleged to be taken in violation
21 of this section. The demand shall be in writing, and submitted
22 within 90 days from the date the action was taken. The demand
23 shall state the challenged action of the board and the nature of the
24 alleged violation.

25 (3) Within 30 days of receipt of the demand, the board shall
26 cure or correct the challenged action and inform the demanding
27 party in writing of its actions to cure or correct, or inform the
28 demanding party in writing of its decision not to cure or correct
29 the challenged action.

30 (4) Within 15 days of receipt of the written notice of the board's
31 decision to cure or correct or not to cure or correct, or within 15
32 days of the expiration of the 30-day period to cure or correct,
33 whichever is earlier, the demanding party shall commence the
34 action pursuant to paragraph (1). If the demanding party fails to
35 commence the action pursuant to paragraph (1), that party shall
36 be barred from commencing the action thereafter.

37 (l) A board action that is alleged to have been taken in violation
38 of this section shall not be determined to be void if the action taken
39 was in substantial compliance with this section.

1 (m) The fact that the board of directors of a mutual water
2 company takes subsequent action to cure or correct an action taken
3 pursuant to this section shall not be construed as, or admissible as
4 evidence of, a violation of this section.

5 (n) An eligible person who prevails in a civil action to enforce
6 his or her rights pursuant to this section shall be entitled to
7 reasonable attorney's fees and court costs. A prevailing mutual
8 water company shall not recover any costs, unless the court finds
9 the action to be frivolous, unreasonable, or without foundation.

10 (o) As used in this section:

11 (1) "Eligible person" means a person who is any of the
12 following:

13 (A) A shareholder or member of the mutual water company.

14 (B) A person who is an occupant, pursuant to a lease or a rental
15 agreement, of commercial space or a dwelling unit to which the
16 mutual water company sells, distributes, supplies, or delivers
17 drinking water.

18 (C) An elected official of a city or county who represents people
19 who receive drinking water directly from the mutual water
20 company on a retail basis.

21 (D) Any other person eligible to participate in the mutual water
22 company's meetings under provisions of the company's articles
23 or bylaws.

24 (2) "Item of business" means any action within the authority of
25 the board, except those actions that the board has validly delegated
26 to any other person or persons, officer of the mutual water
27 company, or committee of the board comprising less than a
28 majority of the directors.

29 (3) "Meeting" means either of the following:

30 (A) A congregation of a majority of the members of the board
31 at the same time and place to hear, discuss, or deliberate upon any
32 item of business that is within the authority of the board.

33 (B) A teleconference in which a majority of the members of the
34 board, in different locations, are connected by electronic means,
35 through audio or video or both. A teleconference meeting shall be
36 conducted in a manner that protects the rights of members of the
37 mutual water company and otherwise complies with the
38 requirements of this title. The notice of the teleconference meeting
39 shall identify at least one physical location so that members of the
40 mutual water company may attend and at least one member of the

1 board of directors or a person designated by the board shall be
2 present at that location. Participation by board members in a
3 teleconference meeting constitutes presence at that meeting as long
4 as all board members participating in the meeting are able to hear
5 one another and members of the mutual water company speaking
6 on matters before the board.

7 (4) “Mutual water company” means a mutual water company,
8 as defined in Section 14300, that operates a public water system,
9 as defined in Section 14300.5.